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In The
Supreme Court of the United States
October Term, 1984

BOROUGH OF DEMAREST, ELIAS M. ELIASOF, EUGENE BERGEN, and EDWARD W. JANSEN,
Petitioners,

vs.

TOWNSHIP OF MAHWAH, JOANNE MAKELY, FRANK P. KRAUS, NEILAN BOMAN, and BERGEN COUNTY BOARD OF TAXATION,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of New Jersey

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

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COUNTERSTATEMENT OF THE CASE

Petitioners, Borough of Demarest, Elias M. Eliasof, Eugene Barden and Edward W. Jansen,* are seeking, by writ of *certiorari,* to have this Court review a decision by the Supreme Court of New Jersey sustaining the constitutionality of a statute (*N.J.S.A.* 54:4-5, now repealed**) granting a rebate of county taxes to the Township of Mahwah, a municipality in the County of Bergen, State of New Jersey. The jurisdiction of this Court is invoked under 28 *U.S.C.* § 1257(3). The rebate statute is being challenged on equal protection grounds. For the period 1974 to 1980, the tax years in question, *N.J.S.A.* 54:4-5 provided a rebate of a portion of a municipality's share of county taxes if the municipality were in a first-class county with a population in excess of 800,000 and said municipality had within its borders a state or county facility of 200 acres or more of land.

The Bergen County Board of Taxation, an original defendant in this matter, annually adopts, in accordance with *N.J.S.A.* 54:4-49 to 52, a table of aggregates on which it computes the tax rates for each of the seventy municipalities in Bergen County. The local property taxes are raised to meet the costs of municipal, school, county library, county health and county budgets and are imposed upon each constituent municipality. The county budget is apportioned among the seventy municipalities in Bergen County based on the ratable wealth of each constituent municipality. In the event a municipality qualifies

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* The Borough of Demarest is a municipality in Bergen County. The three individual petitioners are residents of Bergen County.

** The New Jersey Legislature repealed *N.J.S.A.* 54:4-5 effective for the 1982 tax year and replaced it with different rebate statutes (*N.J.S.A.* 54:4-5a and 5b) which no longer qualify the Township of Mahwah for a rebate of county taxes in future tax years.

for a rebate of one-half of its county taxes under *N.J.S.A.* 54:4-5, the other 69 municipalities in Bergen County are required to proportionately absorb the rebate by having their share of county taxes increased.

For the 1974 to 1980 tax years, the Bergen County Board of Taxation did not grant Mahwah any rebate of its county taxes. Mahwah appealed such determination to the Tax Court of New Jersey, which issued an opinion on November 20, 1981 (3 *N.J. Tax* 513 (Tax Ct. 1981)) holding, *inter alia,* that *N.J.S.A.* 54:4-5 violated the special legislation clause (Art. IV, § VII, par. 9) of the New Jersey Constitution on the basis that the statute arbitrarily granted the rebate only to municipalities in first class counties with populations exceeding 800,000 (App. 37a). Because the statute was deemed unconstitutional, Mahwah was denied the rebate of county taxes. The matter was appealed to the Superior Court of New Jersey, Appellate Division, which affirmed the Tax Court (App. 35a). On further appeal to the Supreme Court of New Jersey, that court reversed the lower courts noting in an extensive opinion, dated January 14, 1985 and reported at 98 *N.J.* 268, — *A.*2d — (1985), that,

1. The standards for review under the special legislation clause of the New Jersey Constitution are identical with the standards applicable to an analysis of a statute's constitutionality under the Equal Protection Clause of the Fourteenth Amendment and have been consistently followed by the Supreme Court of New Jersey for many years.
2. The statute, having existed for over 60 years, is imbued with a strong presumption of validity.
3. Population generally is a valid basis for classification, particularly where the population lines

are drawn to establish a rational relationship with a proper legislative purpose.

4. There is an obvious rationale for granting a rebate of county taxes to those municipalities maintaining the requisite acreage of a tax-exempt, county or state institution which are located in a county with a population in excess of 800,000. Since the population in such counties is denser and more urbanized, such circumstances would logically lead to a more intensive use of the county or state institution and thereby place a greater burden on the host municipality.

5. The county rebate is applicable to municipalities in larger counties because the Legislature might have properly found that the rebate can be more easily absorbed, since the financial burden is reduced on a per capita basis, in the larger counties than in the smaller ones.

ARGUMENT

Since The Legislature Had A Rational And Logical Purpose In Enacting N.J.S.A. 54:4-5, That Statutory Provision Is Consistent With The Equal Protection Standards of the United States Constitution.

During the tax years in issue, *N.J.S.A.* 54:4-5 provided that,

> A taxing district in a county of the first class having in excess of 800,000 population in which there has been located a State or county institution other than a park commission or lands owned or occupied by a park commission occupying more than 200 acres and not in excess of 400 acres of land, in the aggre-

gate, shall have remitted or rebated by the county treasurer a sum equal to ½ of the county tax rate applied to the entire amount of ratables remaining subject to taxation. A taxing district in such a county of the first class in which there has been located a State or county institution other than a park commission or lands owned or occupied by a park commission occupying in excess of 400 acres of land, in the aggregate, shall have remitted or rebated by the county treasurer a sum equal to ¾ of the county tax rate applied to the entire amount of ratables remaining subject to taxation.

The rebate statute established the following criteria in order for a municipality to be eligible for a rebate of either ½ or ¾ of its apportioned share of county taxes:

(1) The municipality must be located in a county of the first class whose population exceeds 800,000;

(2) The municipality must have located within its boundaries at least 200 acres of state or county land to qualify for a rebate of one-half of the county taxes or at least 400 acres to qualify for a rebate of three-quarters of county taxes;

(3) The acreage in question must be used and occupied by a State or county institution for a purpose other than parkland.*

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* In *Bergen Cty. v. Paramus Bor.*, 79 *N.J.* 302, 399 *A.*2d 616 (1979), and *Paramus Bor. v. Capello*, 66 *N.J.* 1, 326 *A.*2d 685 (1974), the Supreme Court of New Jersey established the revelant standards that must be met by a municipality in order to qualify for either of the two rebates (½ or ¾ of county taxes). The court noted that mere ownership of the property by the appropriate public entity is not sufficient. The court defined the term "occupying" as used in the statute to connote " . . . actual governmental use". *Paramus Bor. v. Capello, supra,* 66 *N.J.* at 5. Such use must be reflected in a " . . . present intent to devote the property to a public use within a reasonable length of time." *Bergen Cty. v. Paramus Bor., supra,* 79 *N.J.* at 308.

N.J.S.A. 54:4-5 became law in 1922 (New Jersey Laws 1922, chapter 130) and initially provided a rebate of one-half of the county taxes to any taxing district in a county of the first class in which there was located a state or county institution occupying 200 acres or more of land. In the statement to this legislation, the legislature noted its concern for municipalities such as the Township of Cedar Grove in Essex County:

> This bill is proposed to correct an injustice to the Township of Cedar Grove, or in the Overbrook Hospital as situated. The township is compelled to furnish tuition to the children of the various officials and attendants employed there, and is also compelled to record the vital statistics and to furnish protection to the inhabitants of said hospital, without receiving a dollar in return.

Thus the legislature, being aware of the predicament of municipalities such as Cedar Grove in having to maintain a tax exempt county hospital without being compensated therefor, determined to provide such municipalities a rebate of a portion of their county taxes. Cedar Grove has received a rebate of one-half of its county taxes each year since the inception of the statute. During the 1960's, when Hudson County qualified as a first class county, the Town of Secaucus, which maintained a county hospital, also qualified for the rebate of one-half of its county taxes. In addition to Mahwah, one other municipality, the Bor-

ough of Paramus, may qualify for the rebate in Bergen County for certain tax years in the 1970's and 1980's.*

It is fundamental to constitutional principles that a legislature has a wide range of discretion in establishing classifications and that such discretion is especially broad in the field of taxation:

> The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized . . . [T]he passage of time has only served to underscore the wisdom of that recognitian of the large area of discretion which is needed by a legislature in formulating sound tax policies. . . . It has . . . been pointed out that *in taxation, even more than in other fields, legislatures possess the greatest freedom in classification.* Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. . . . [*Madden v. Kentucky*, 309 *U.S.* 83, 87-88, (1940); emphasis supplied].

See also *Regan v. Taxation with Representation of Washington*, — *U.S.* —, 76 *L.Ed*.2d 129 (1983). These principles were reaffirmed in *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 *U.S.* 356, 359 (1973):

> Where taxation is concerned and no specific federal right, apart from equal protection is imperiled, the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation. As stated in *Allied Stores of Ohio v. Bowers*, 358 *U.S.* 522, 526-527, 3 *L.Ed*.2d 480, 79 *S.Ct.* 437:

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* Paramus' rebate claims are presently pending in the New Jersey Tax Court.

> The States have a very wide discretion in the laying of their taxes. When dealing with their proper domestic concerns, and not trenching upon the prerogatives of the National Government or violating the guaranties of the Federal Constitution, the States have the attribute of sovereign powers in devising their fiscal systems to ensure revenue and foster their local interests. Of course, the States, in the exercise of their taxing power, are subject to the requirements of the Equal Protection Clause of the Fourteenth Amendment. But that clause imposed no iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of state taxation.

The rationale for this broad view of government's taxing powers has been explained as follows:

> [A tax] is . . . a means of distributing the burden of the cost of government. The only benefit to which the taxpayer is constitutionally entitled is that derived from his enjoyment of the privilege of living in an organized society, established and safeguarded by the devotion of taxes to public purposes. . . . Any other view would preclude the levying of taxes except as they are used to compensate for the burden on those who pay them, and would involve the abandonment of the most fundamental principle of government—that it exists primarily to provide for the common good. . . . This court has repudiated the suggestion, whenever made, that the Constitution requires the benefits derived from the expenditure of public moneys to be apportioned to the burdens of the taxpayer, or that he can resist the payment of the tax because it is not expended for purposes which are peculiarly beneficial to him. [*Carmichael v. Southern Coal & Coke Co.*, 301 *U.S.* 495, 522-523 (1931)].

The complexity of attempting to determine the fairness of taxing schemes was further recognized by this Court

in *San Antonio School District v. Rodriguez,* 411 *U.S.* 1, 41, (1973), in which it considered challenges, on equal protection grounds, to Texas' statutory method for financing public education primarily from revenues collected from local real property taxes. In affirming this statutory financing scheme, this Court stated that,

> [W]e stand on familiar ground when we continue to acknowledge that the Justices of this Court lack both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to the raising and disposition of public revenues. Yet, we are urged to direct the States either to alter drastically the present system or to throw out the property tax altogether in favor of some form of taxation. No scheme of taxation, whether the tax is imposed on property, income or purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex arena in which no perfect alternatives exist, the court does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection Clause.

Similarly, in *Exxon Corp. v. Eagerton,* — *U.S.* —, 76 *L.Ed.* 2d 497, 513 (1983), this Court reiterated that it has traditionally applied a "lenient standard of rationality" to economic and commercial matters under equal protection analysis. Clearly, therefore, these decisions establish the broad discretion state legislatures may exercise in formulating fiscal arrangements and further caution the judiciary against undue interference with a state's fiscal policies.

N.J.S.A. 54:4-5 specifically involves a county tax apportionment scheme. The rebate statute, as originally

adopted and as enacted in the form of *N.J.S.A.* 54:4-5, reflects a legislative determination that municipalities located in large counties and maintaining a state or county institution occupying more than 200 (400) acres are to receive a rebate of ½ (¾) of the county taxes. The rebate of county taxes accomplishes two specific purposes: first, it provides a means for affording tax relief to a municipality which is financially burdened by the location of a state or county institution within its borders that uses and occupies more than 200 (400) acres and is exempt from local property taxes; second, it requires that the other municipalities within the county share the financial burdens for a state and county institution which serves the interests of the entire county. The legislature properly recognized, in enacting *N.J.S.A.* 54:4-5, the inevitable fiscal burdens that befall a municipality for supporting a state or county institution within its borders which uses and occupies the requisite acres but is not subject to real property taxation. The rebate statute,

> . . . is a method which the Legislature created to compensate some municipalities for revenues they would have otherwise received if the property had not been exempt from taxation, a condition which arose by virtue of public ownership and use. [*Bergen Cty. v. Paramus,* 79 *N.J.* 302, 309, 329 *A.*2d 616 (1979)].

Moreover, the Legislature also properly determined that the other municipalities in the county should share part of the expenses for maintaining such an institution by proportionately picking up the costs of the rebate of county taxes. The propriety and rationality of other municipalities in the county sharing the rebate expense

is warranted since the residents of these municipalities have the benefit and use of the state or county institution located within the same county.

The legislature, in providing for the rebate under *N.J.S.A.* 54:4-5 to municipalities in first class counties with a population in excess of 800,000, intended to restrict the rebate only to the counties with the largest county taxes and the largest population. Since the obligation to pay the county taxes was legislatively assigned to the constituent municipalities, the legislature logically determined that only those municipalities located in the largest counties should be eligible for the rebate of county taxes. Also, as the Supreme Court of New Jersey found, the rebate, by being applicable only to municipalities in the largest counties, would be absorbed by a larger group of taxpayers which could more easily bear the financial burden than would otherwise be the case if the eligibility for the rebate were in smaller, less populous counties.

The Supreme Court of New Jersey also appropriately noted that there are additional conceivable rationales for this county apportionment scheme. It is logical to assume that a municipality in a larger county would have greater demands placed upon it in supporting a state or county institution for various services (*e.g.*, police, fire, ambulance, maintenance of roads, sanitation) than a municipality in a smaller county. Such a municipality would thus be more justified in receiving the financial assistance from the remaining communities in the county whose residents have equal access to, or benefits from the state or county institution. In addition, the legislature may have recognized that counties with larger populations tend to be more urbanized and thereby place more intensive

demands on public facilities located within such counties. A municipality in such a county maintaining the requisite state or county institution may, therefore, reflect a greater need for financial compensation than a similarly situated municipality in a smaller county.

In *North v. Russell,* 427 *U.S.* 328 (1976), this Court sustained the classification of municipalities based on population under the Equal Protection Clause in the context of considering the validity of a Kentucky statutory provision which permitted lay judges to preside in small cities while requiring law-trained judges in larger cities. This Court found adequate and rational grounds for the classification and thus upheld the statutory distinction. See also *Missouri v. Lewis,* 101 *U.S.* 22 (1880).

As previously discussed, the distinction established in *N.J.S.A.* 54:4-5 between municipalities in first class counties with a population exceeding 800,000 and municipalities in less populous counties is rationally grounded. It is based on the recognition that the maintenance of a tax-exempt state or county institution of sufficient acreage by a municipality in a larger county establishes a special need for a rebate of a portion of the county taxes for the host municipality proportionately shared by the taxpayers of the other municipalities in the county. The more populous and more urbanized nature of such counties leads logically to a more intensive use of the institution by the county residents and justifies the rebate mechanism. In light of the extraordinary deference to be paid to legislative enactments relating to fiscal matters under the Equal Protection Clause, it is clear that the county rebate statute, *N.J.S.A.* 54:4-5, is based on rational underpinnings and is, therefore, conclusively valid.

The petition for writ of *certiorari* plainly does not raise a question of constitutional dimension which would warrant the granting of such extraordinary relief. Therefore, the petition should be denied.

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CONCLUSION

For the aforementioned reasons, it is respectfully submitted that the petition for writ of *certiorari* should be denied.

Respectfully submitted,

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